



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: SEP 08 2014

Office: VERMONT SERVICE CENTER

File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Acting Director (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition is approved.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by her spouse during their marriage, and that she had entered into her marriage in good faith.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien’s spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Pertinent Facts and Procedural History

The petitioner was born in Peru, and entered the United States as a nonimmigrant visitor on July 1, 2000. The petitioner married J-K¹, a U.S. citizen on March 20, 2011. The petitioner filed the instant Form I-360 on September 2, 2011. The petitioner and J-K- divorced in July 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and the requisite battery or extreme cruelty. The petitioner responded with additional evidence that the director found insufficient and the director denied the petition.

¹ Name withheld to protect individual's identity.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner submits a brief and additional evidence.

Battery or Extreme Cruelty

In her letter, dated June 13, 2011, the petitioner stated that a week after she married J-K- they argued about finances and grocery purchases. She stated that J-K- called her names to humiliate her, yelled at her, and pressured her to have sex by accusing her of not loving him and being unfaithful. She reported that her husband would bite her for his pleasure, and that she disliked it. The petitioner stated that J-K- consumed cannabis absinthe, and told her that he had a dark past and wanted to buy a gun for protection. She described how she felt afraid of J-K- during an argument at her in-laws' house, and how her fear increased after she moved out of their apartment and J-K- slashed her coats and sandals with a knife. She stated that she requested a protective order against J-K- and had nightmares about him, and sought help from a therapist.

In her letter, dated June 13, 2011, the petitioner's mother, [REDACTED] stated that the petitioner looked sad a week after her wedding. Ms. [REDACTED] stated that she once heard J-K- yell and curse at the petitioner, that the petitioner eventually told her about her marital problems, and that she would worry about the petitioner's safety. Ms. [REDACTED] described the occasions when she was at the petitioner's apartment and the last argument the petitioner had with J-K-. She recounted that the petitioner was upset about the damage to her coats and sandals and that she scheduled a doctor's appointment for the petitioner and accompanied her to request a protective order.

Dr. [REDACTED] a licensed psychologist, stated in her evaluation that the petitioner described physical, emotional, and sexual abuse during her marriage to J-K-. Dr. [REDACTED] stated that the petitioner was physically intimidated by J-K- and subjected to name calling. Dr. [REDACTED] stated that the petitioner told her that J-K- was angry when she refused to have sex with him and that he raped her during their last sexual encounter. Dr. [REDACTED] diagnosed the petitioner with post-traumatic stress disorder and major depressive disorder and reported that she exhibited anxious behavior due to her relationship with her former husband.

Family court records show that the petitioner was granted an ex-parte preliminary protective order against J-K-. Medical records from the petitioner's physician state that the petitioner met with a private counselor for anxiety disorder and adjustment disorder due to her marital relationship. The letter from Dr. [REDACTED] dated June 16, 2011, stated that the petitioner sought counseling due to her relationship with her husband, and that the petitioner had attended one session for a mental health intake.

On appeal, counsel asserts that the director erred in stating that the denial of a final protective order detracts from the petitioner's credibility about the claimed abuse. Counsel states that the petitioner could not meet the legal standard of "family abuse" under section 16.1-228 of the Virginia Code²

² Va. Code Ann. § 16.1-228 states:

because the statute requires physical abuse and the abuse the petitioner was subjected to was primarily emotional. The submitted letter from the petitioner's family law attorney, [REDACTED] states that he represented the petitioner in the request for a protective order against J-K-, and that the petitioner did not meet the legal standard for a protective order, but the judge did not question the petitioner's credibility.

Upon a full review of all the relevant and credible evidence submitted below and on appeal, the petitioner has overcome the director's determination. The petitioner described in probative detail her former husband's physical and emotional violence. The psychological evaluation is detailed and concluded that the petitioner had post-traumatic stress disorder and major depressive disorder due to her having been abused by her former husband. When the relevant evidence is viewed together, it demonstrates that J-K- subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good-Faith Entry into the Marriage

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." *See* 8 C.F.R. § 204.2(c)(2)(vii). The petitioner stated in her letter, dated June 13, 2011, that she and J-K- were friends during high school and that five years after she graduated from high school they met again in October 2010. The petitioner stated that she and J-K- fell in love instantly when they reunited, they spent time together, and she met his parents. The petitioner recounted that in late February J-K- proposed to her, showing her a diamond in a box. She stated that they agreed to get married on March 20 at his parents' house and a few family members would be present. She declared that the apartment they lived in was furnished by her parents, and her in-laws offered to pay for their honeymoon trip. The petitioner described in probative detail her feelings for J-K- and her reasons for marrying him. The petitioner also submitted photographs of the petitioner and J-K- together and with other people at different occasions. The petitioner submitted a copy of her renters insurance which lists J-K- and the petitioner. The petitioner additionally submitted a residential lease agreement listing the petitioner and J-K- as occupants. The lease and renters insurance list the same address. When viewed in the totality, the preponderance of the relevant evidence submitted below demonstrates that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

"Family abuse" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes . . . any forceful detention, stalking, criminal sexual assault . . . or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

Conclusion

The record establishes that the petitioner was subjected to battery or extreme cruelty by her former spouse during their marriage and that she entered into the marriage with him in good faith. She is consequently eligible for immigrant classification based on her marriage to J-K- under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has been met. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The petition is approved.